

STATE OF MICHIGAN
COURT OF APPEALS

DETROIT TAX LIEN CO., L.C.,

Plaintiff-Appellant,

v

KIRMAN DANTE PAUL and OCCUPANTS OF
16185 OHIO, DETROIT, MICHIGAN,

Defendants-Appellees.

UNPUBLISHED

August 12, 2003

No. 239905

Wayne Circuit Court

LC No. 01-103356-CH

Before: Murphy, P.J., and Cooper and C. L. Levin*, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's September 24, 2001, order denying its motion for summary disposition, as well as the trial court's February 5, 2002, order granting defendant's motion for summary disposition, pursuant to MCR 2.116(C)(8) and (10). We affirm.

This is an action to quiet title of a parcel of real property, commonly known as 16185 Ohio, Detroit, Michigan, that plaintiff acquired at a tax sale. On appeal, we are called upon to determine whether plaintiff properly notified defendant of the tax sale and their redemption rights in accordance with MCL 211.140. After reviewing the record, we conclude that the redemption period did not begin to run because plaintiff failed to strictly comply with the statutory notice provisions. Specifically, plaintiff failed to attempt personal service prior to publication.

Defendant acquired a quit claim deed to the disputed property in 1988. The record indicates that defendant was subsequently incarcerated from April 1995 to June 30, 1998, and failed to pay the 1994 county property taxes on the property. As a result, plaintiff was able to purchase the property at the 1997 tax sale and received a tax deed in October 1998. On April 26, 2000, plaintiff delivered a "Notice by Persons Claiming Title Under Tax Deed" to the Wayne County Sheriff Department for personal service on defendant. In the "Return of Failure of Service," the Sheriff indicated that despite "careful inquiry" it was unable to locate defendant for personal service during the period between April 26 and May 15, 2000. Plaintiff also published a copy of this notice in the Detroit Legal News on April 25 and May 2, 9, 16, 2000. The return of service was filed with the Treasurer's Office on May 31, 2000. Defendant failed to redeem the property from plaintiff within the following six months.

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

This same parcel of property was again offered for sale in 1998 as a result of defendant's failure to pay the 1995 county taxes. At this sale, the State of Michigan obtained a tax purchaser's interest in the property. However, the State of Michigan failed to exhaust the necessary statutory prerequisites to perfect its title. Upon notice that the State of Michigan purchased the property at a tax sale, defendant paid the 1995 county taxes and the outstanding taxes for the following years. The State of Michigan provided defendant with a "Quit Claim Reconveyance Deed" to the property. Defendant recorded this deed on August 29, 2001.

Plaintiff raises several arguments on appeal to support its contention that the trial court erroneously denied its motion for summary disposition and granted defendant's motion. Initially, plaintiff asserts that it properly served defendant notice of his reconveyance rights, pursuant to MCL 211.140. We disagree. A trial court's denial of a motion for summary disposition is reviewed de novo on appeal. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although the motion was premised on MCR 2.116(C)(8) and (C)(10), because the trial court examined evidence beyond the pleadings, the issues will be reviewed under the standard applicable to MCR 2.116(C)(10) motions.

A motion pursuant to MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999). "In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists." *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001). Summary disposition under MCR 2.116(C)(10) is appropriate only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Auto-Owners Ins Co*, *supra* at 397.

Real property for which taxes remain unpaid is subject to sale by the county. MCL 211.60. However, a private purchaser of property at a tax sale must strictly comply with the tax sale notice provisions because these proceedings serve to divest true owners of their property interests. *Equivest Ltd Partnership v Brooms*, 253 Mich App 450, 454-455; 656 NW2d 369 (2002); *Andre v Fink*, 180 Mich App 403, 407-408; 447 NW2d 808 (1989). To perfect an interest in such property, a private purchaser must provide notice of reconveyance to all interested parties pursuant to MCL 211.140. MCL 211.140 provides in pertinent part as follows:

(1) A writ of assistance or other process for the possession of property the title to which was obtained by or through a tax sale, except if title is obtained under section 131, shall not be issued until 6 months after the sheriff of the county where the property is located files a return of service with the county treasurer of that county showing service of the notice prescribed in subsection (2). The return shall indicate that the sheriff made personal or substituted service of the notice on the following persons who were, as of the date the notice was delivered to the sheriff for service:

(a) The last grantee or grantees in the regular chain of title of the property, or of an interest in the property, according to the records of the county register of deeds.

(b) The person or persons in actual open possession of the land.

* * *

(5) If the sheriff of the county where the property is located is unable, *after* careful inquiry, to ascertain the whereabouts or the post office address of the persons on whom notice may be served as prescribed in this section, service of the notice shall be made by publication. The notice shall be published for 4 successive weeks, once each week, in a newspaper published and circulated in the county where the property is located, if there is one. . . . This publication shall be instead of personal service upon the person or persons whose whereabouts or post office address cannot be ascertained as set forth in subsection (3).

After a return of service or proof of publication is filed with the county treasurer, a six month redemption period commences wherein interested parties may still retain their rights to the property. See MCL 211.141; *Equivest, supra* at 453.

Plaintiff claims that it was entitled to summary disposition because it notified defendant via publication of the tax sale, pursuant to MCL 211.140(5), and that defendant failed to act within the six month redemption period. However, after a careful review of the record, it is apparent that plaintiff failed to strictly comply with the notice requirements set forth in MCL 211.140(5). Affording MCL 211.140(5) its plain meaning, publication is clearly an alternative form of notification that is permissible only after the county sheriff makes a determination that the individuals cannot be located for personal service. *Ottaco, Inc v Kalport Development, Co, Inc*, 239 Mich App 88, 93; 607 NW2d 403 (1999) (holding that statutory language must be given its plain and ordinary meaning). In this case, plaintiff commenced publication of the “Notice by Persons Claiming Title Under Tax Deed” before it gave the notice to the sheriff’s department for personal service.¹ As plaintiff failed to strictly comply with the statute’s notification requirements, the redemption period did not properly commence. See *Equivest, supra* at 454. Accordingly, the trial court properly granted defendant’s motion for summary disposition. Although it appears from the record that the trial court granted defendant’s motion on a different basis, when the trial court reaches the right result this Court will not reverse its decision. See *Zdrojewski v Murphy*, 254 Mich App 50, 70-71; 657 NW2d 721 (2002).

¹ The Return of Failure of Service signed by the Wayne County Sheriff Department specifically states that the department received plaintiff’s Notice of Persons Claiming Title Under Tax Deed on April 26, 2000. This was one day after the same notice was published in the Detroit Legal News.

Because we conclude that plaintiff failed to provide the proper statutory notice, we need not address the remainder of the issues raised by plaintiff on appeal.

Affirmed.

/s/ William B. Murphy

/s/ Jessica R. Cooper

/s/ Charles L. Levin